



# House of Representatives

General Assembly

**File No. 572**

*January Session, 2015*

House Bill No. 5792

*House of Representatives, April 13, 2015*

The Committee on Government Administration and Elections reported through REP. JUTILA of the 37th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING THE SET-ASIDE PROGRAM AND THE PERCENTAGE OF CONTRACTS RESERVED FOR MINORITY BUSINESS ENTERPRISES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsections (a) and (b) of section 4a-60g of the general  
2 statutes are repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2015*):

4 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,  
5 the following terms have the following meanings:

6 (1) "Small contractor" means any contractor, subcontractor,  
7 manufacturer, service company or nonprofit corporation (A) that  
8 maintains its principal place of business in the state, (B) that had gross  
9 revenues not exceeding fifteen million dollars in the most recently  
10 completed fiscal year prior to such application, and (C) that is  
11 independent. "Small contractor" does not include any person who is

12 affiliated with another person if both persons considered together have  
13 a gross revenue exceeding fifteen million dollars.

14 (2) "Independent" means the viability of the enterprise of the small  
15 contractor does not depend upon another person, as determined by an  
16 analysis of the small contractor's relationship with any other person in  
17 regards to the provision of personnel, facilities, equipment, other  
18 resources and financial support, including bonding.

19 (3) "State agency" means each state board, commission, department,  
20 office, institution, council or other agency with the power to contract  
21 for goods or services itself or through its head.

22 (4) "Minority business enterprise" means any small contractor (A)  
23 fifty-one per cent or more of the capital stock, if any, or assets of which  
24 are owned by a person or persons who (i) exercise operational  
25 authority over the daily affairs of the enterprise, (ii) have the power to  
26 direct the management and policies and receive the beneficial interest  
27 of the enterprise, (iii) possess managerial and technical competence  
28 and experience directly related to the principal business activities of  
29 the enterprise, and (iv) are members of a minority, [as such term is  
30 defined in subsection (a) of section 32-9n,] are women or are  
31 individuals with a disability, or (B) which is a nonprofit corporation in  
32 which fifty-one per cent or more of the persons who (i) exercise  
33 operational authority over the enterprise, (ii) possess managerial and  
34 technical competence and experience directly related to the principal  
35 business activities of the enterprise, (iii) have the power to direct the  
36 management and policies of the enterprise, and (iv) are members of a  
37 minority, [as defined in this subsection,] are women or are individuals  
38 with a disability.

39 (5) "Affiliated" means the relationship in which a person directly, or  
40 indirectly through one or more intermediaries, controls, is controlled  
41 by or is under common control with another person.

42 (6) "Control" means the power to direct or cause the direction of the  
43 management and policies of any person, whether through the

44 ownership of voting securities, by contract or through any other direct  
45 or indirect means. Control shall be presumed to exist if any person,  
46 directly or indirectly, owns, controls, holds with the power to vote, or  
47 holds proxies representing, twenty per cent or more of any voting  
48 securities of another person.

49 (7) "Person" means any individual, corporation, limited liability  
50 company, partnership, association, joint stock company, business trust,  
51 unincorporated organization or other entity.

52 (8) "Minority" means (A) Black Americans, including all persons  
53 having origins in any of the Black African racial groups not of  
54 Hispanic origin; (B) Hispanic Americans, including all persons of  
55 Mexican, Puerto Rican, Cuban, Central or South American, or other  
56 Spanish culture or origin, regardless of race; (C) all persons having  
57 origins in the Iberian Peninsula, including Portugal, regardless of race;  
58 (D) Asian Pacific Americans and Pacific Islanders; or (E) American  
59 Indians and persons having origins in any of the original peoples of  
60 North America and maintaining identifiable tribal affiliations through  
61 membership and participation or community identification.

62 [(8)] (9) "Individual with a disability" means an individual (A)  
63 having a physical or mental impairment that substantially limits one or  
64 more of the major life activities of the individual, which mental  
65 impairment may include, but is not limited to, having one or more  
66 mental disorders, as defined in the most recent edition of the American  
67 Psychiatric Association's "Diagnostic and Statistical Manual of Mental  
68 Disorders", or (B) having a record of such an impairment.

69 [(9)] (10) "Nonprofit corporation" means a nonprofit corporation  
70 incorporated pursuant to chapter 602 or any predecessor statutes  
71 thereto.

72 (b) It is found and determined that there is a serious need to help  
73 small contractors, minority business enterprises, nonprofit  
74 organizations and individuals with disabilities to be considered for  
75 and awarded state contracts for the construction, reconstruction or

76 rehabilitation of public buildings, the construction and maintenance of  
77 highways and the purchase of goods and services. Accordingly, the  
78 necessity, in the public interest and for the public benefit and good, of  
79 the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and  
80 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative  
81 determination. Notwithstanding any provisions of the general statutes  
82 to the contrary, and except as set forth herein, the head of each state  
83 agency and each political subdivision of the state other than a  
84 municipality shall set aside in each fiscal year, for award to small  
85 contractors, on the basis of competitive bidding procedures, contracts  
86 or portions of contracts for the construction, reconstruction or  
87 rehabilitation of public buildings, the construction and maintenance of  
88 highways and the purchase of goods and services. Eligibility of  
89 nonprofit corporations under the provisions of this section shall be  
90 limited to predevelopment contracts awarded by the Commissioner of  
91 Housing for housing projects. The total value of such contracts or  
92 portions thereof to be set aside by each such agency shall be at least  
93 twenty-five per cent of the total value of all contracts let by the head of  
94 such agency in each fiscal year, provided that neither: (1) A contract  
95 that may not be set aside due to a conflict with a federal law or  
96 regulation; or (2) a contract for any goods or services which have been  
97 determined by the Commissioner of Administrative Services to be not  
98 customarily available from or supplied by small contractors shall be  
99 included. Contracts or portions thereof having a value of not less than  
100 twenty-five per cent of the total value of all contracts or portions  
101 thereof to be set aside shall be reserved for awards to minority  
102 business enterprises, provided not less than fifty per cent of the  
103 contracts or portions of such contracts so reserved shall be reserved for  
104 awards to minority business enterprises that are members of a  
105 minority.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2015	4a-60g(a) and (b)
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**GAE**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Dept. of Administrative Services	GF - Cost	Minimal	Minimal
Comptroller - Adjudicated Claims Account	GF - Cost	Potential	Potential

Note: GF=General Fund

#### **Municipal Impact:** None

#### **Explanation**

The bill would change the spending goals for minority business enterprises (MBEs), by requiring at least 50% of MBE spending on ethnic minority-owned businesses, as opposed to woman or disabled owned businesses. The Department of Administrative Services (DAS) would incur a minimal cost to revise all documents and forms related to the set-aside program.

The bill may expose the state to potential future liability as it changes the spending goals<sup>1</sup> for MBEs. The potential cost cannot be determined as it would depend upon the number of claims against the state, associated litigation costs and the cost of any such judgments.

#### **The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Department of Administrative Services

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<sup>1</sup>In order to be legally valid such a change must be based on data and/or evidence (traditionally via a disparity study) showing that a particular race or gender group has been disparately impacted or discriminated against. The Connecticut Academy of Science and Engineering (CASE) is currently conducting a disparity study for the state. The state's liability would be mitigated to the extent that the results of the new study are in-line with the changes of the bill.

**OLR Bill Analysis****HB 5792*****AN ACT CONCERNING THE SET-ASIDE PROGRAM AND THE PERCENTAGE OF CONTRACTS RESERVED FOR MINORITY BUSINESS ENTERPRISES.*****SUMMARY:**

By law, state agencies and political subdivisions (i.e., “agencies”), other than municipalities, must set aside 25% of the total value of all contracts they let for construction, goods, and services each year for exclusive bidding by certified small contractors. The agencies must further reserve 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified minority business enterprises (MBE), which are small contractors owned by women, minorities, or people with disabilities.

This bill requires agencies to reserve half of the MBE set-aside value (3.125% of the total value of all contracts) specifically for MBEs that are owned by minorities. The other half of the MBE set-aside remains open to all MBEs. The bill also makes technical changes.

By law, a small contractor is a business that (1) maintains its principal place of business in Connecticut, (2) had gross revenues of \$15 million or less during its most recent fiscal year, and (3) is independent. MBE owners, in addition to meeting the above criteria, must have managerial and technical competence and experience directly related to their principal business activities.

EFFECTIVE DATE: October 1, 2015

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 9      Nay 6      (03/25/2015)